

**Letter of Findings: 01-20150445
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was a resident in Indiana for the tax year 2011. Therefore, Individual was required to file an Individual Income Tax Return.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; IC § 9-24-9-2; IC § 9-24-1-1.5; IC § 9-24-9-1; [45 IAC 3.1-1-21](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayer lived in Indiana from 2001-2007. In April 2007 Taxpayer moved out of the country. During his time in Indiana Taxpayer lived at three different addresses. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 and that Taxpayer failed to file his 2011 Indiana income tax return. The Department therefore, issued a proposed assessment for 2011 income tax, penalty, and interest.

Taxpayer protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2011 tax year on the ground that Taxpayer was an Indiana resident and that he failed to file a 2011 Indiana income tax return. The Department based its assessment on Taxpayer's valid 2011 Indiana driver's license and 2011 federal tax documents that reported an Indiana address. Taxpayer contends that he was not required to file a 2011 Indiana income tax return because he was not an Indiana resident. The issue is whether, for the tax year 2011, Taxpayer was Indiana resident and was therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC §

6-3-1-3.5(a) provides the starting point to determine the taxpayer' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

During the protest Taxpayer provided several documents to demonstrate that he was not a resident of Indiana for the year 2011. The documents included his passport (listing an Ohio address), two temporary resident visas for two separate foreign countries, a 2007 Indiana tax return, and a 2008 PNR Indiana tax return.

Despite moving abroad in 2007, Taxpayer renewed his Indiana driver's license in 2011. In addition, Taxpayer intentionally had 1099s sent to an Indiana address. Taxpayer contends that he never lived at the address listed on his license or 1099s. He stated he used a previous neighbor's address out of convenience. Taxpayer stated that he kept his Indiana driver's license so that he could rent a car, drive a car, and use it as an additional form of identification while back in the United States. Taxpayer went on to state that when he attempted to change his address from his Indiana address to his foreign one, financial institutions resisted. Taxpayer went onto explain that,

U.S. Financial institutions are don't [sic.] like Foreign Addresses on 1099 because it changes the documentation required to be collected. If the taxpayer uses a U.S. Address the financial institution need only collect a W-9. However, if there is a Foreign Address listed on an account, the financial institution collects a W-8 and such income is subject to a different withholding regime. In short, financial institutions would rather have a U.S. Address on accounts rather than a Foreign Address.

Taxpayer went on to explain that he had no intention to return to Indiana. When his time abroad ends he intends to live and work in a different state.

IC § 9-24-9-2 explains that each applicant for an Indiana driver's license is **required** to provide a principal address and mailing address. (**Emphasis added**). In addition, IC § 9-24-1-1.5 states, "Individual who is an Indiana **resident** is eligible to apply for a license under this article." (**Emphasis added**). Finally, IC § 9-24-9-1 states that an applicant for an Indiana driver's license, "must . . . include a signed affidavit in which the applicant swears or affirms that the information set forth in the application, by the applicant is correct"

When Taxpayer renewed his license in 2011, Taxpayer swore or affirmed that he was an Indiana resident. Taxpayer listed an Indiana address as his legal address with the Indiana Bureau of Motor Vehicles. Furthermore, keeping an Indiana address out of convenience is not a valid reason for the Department to disregard what Taxpayer told a separate state agency.

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* 1317 (Internal citations omitted).

The Supreme Court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (Internal citations omitted).

Taxpayer cannot say he is a resident to one state agency while telling another he is not a resident for tax purposes. Taxpayer has not provided enough documentation to show that he was not a resident of Indiana. The standards set forth in Bayh show that Taxpayer intended to remain an Indiana resident. Taxpayer might intend to eventually live elsewhere when he returns to the U.S., but until that happens, Taxpayer is presumed to reside in Indiana. Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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